

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

OLA KIRK

PLAINTIFF

VS.

CAUSE NO.: 3:14-CV-537-WHB-RHW

**MISSISSIPPI DEPARTMENT OF
PUBLIC SAFETY, ET AL.**

DEFENDANTS

DEFENDANTS SANTA CRUZ AND BERRY'S MOTION TO DISMISS

COME NOW Albert Santa Cruz and Donnell Berry, two of the Defendants in the above styled and numbered cause, by and through counsel, and file this their Motion to Dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and for cause therefor, would show unto the court as follows:

1. These Defendants are not proper parties in a claim brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.* or the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.*

2. Plaintiff cannot maintain a cause of action directly under the Constitution of the United States.

3. The Complaint fails to state a claim under 42 U.S.C. §1983 upon which relief may be granted against these Defendants in their official capacity.

4. These Defendants are entitled to the protections afforded by the doctrine of qualified immunity as to Plaintiff's claims under 42 U.S.C. §1983 in their individual capacity.

WHEREFORE, PREMISES CONSIDERED, Defendants Albert Santa Cruz and Donnell Berry move the court to grant this their Motion to Dismiss and to dismiss them

from this action. Defendants pray for such other and further relief as may be deemed appropriate.

RESPECTFULLY SUBMITTED, this the 5th day of August, 2014.

**ALBERT SANTA CRUZ AND DONNELL BERRY,
Defendants**

**BY: JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

BY: s/ Peter W. Cleveland
PETER W. CLEVELAND, MSB NO. 6301
SPECIAL ASSISTANT ATTORNEY GENERAL

Office of the Attorney General
Civil Litigation Division
Post Office Box 220
Jackson, Mississippi 39205-0220
Telephone: (601) 359-3822
Facsimile: (601) 359-2003
pclev@ago.state.ms.us

CERTIFICATE OF SERVICE

I, Peter W. Cleveland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that on this date I caused to be electronically filed the foregoing ***Defendants Santa Cruz and Berry's Motion to Dismiss*** with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

John M. Mooney, Jr.
LAW OFFICES OF JOHN M. MOONEY, JR., PLLC
208 Waterford Square, Ste. 100
Madison, MS 39110

THIS, the 5th day of August, 2014.

s/ Peter W. Cleveland
PETER W. CLEVELAND